B. Buttan Singh and Others Vs Sakal Raj Singh

Court: Allahabad High Court

Date of Decision: Jan. 12, 1945

Acts Referred: Uttar Pradesh Agriculturists Relief Act, 1934 â€" Section 3(4)

Citation: AIR 1945 All 161 : (1945) 15 AWR 54

Hon'ble Judges: Bennett, J; Bennet, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Bennett, J.
The only question to be considered in this appeal is a question of limitation. The respondent, who was the plaintiff in the suit,

obtained a preliminary decree on a mortgage in 1936. The mortgage was executed on 13th November 1927 for Rs. 426. The Munsif who granted

the preliminary decree gave the defendants the benefit of the Agriculturists" Relief Act by reducing the interest and allowing payment by

instalments. The order passed by him on 1st September 1936 was as follows:

Suit is decreed with costs for Rs. 425 as principal and interest at 12 per cent, up to 1st January 1930 and thereafter it would be reduced to 9 1/2

per cent. Pendente lite and future interest is reduced to 3 1/4 per cent. The defendants are allowed to pay the sum in eight instalments which would

be due in January and July of every year. Usual law in case of default.

No instalments were paid by the defendants, but the decree-holder did not apply for a final decree for. sale under Order 3, Rule 4, Civil P.C., until

28th July 1941. The Munsif dismissed the application as being beyond three years from the date when the money became recoverable. He

observed that in default of payment of three instalments the whole balance was to become due. The third instalment fell due in January 1938. He

considered whether the Temporary Postponement of Execution of Decrees Act saved limitation and held that it did not because it applies only to

institutions of suits and execution applications. In first appeal the Additional Civil Judge, on a consideration of certain authorities, held that the

instalments which were due in July 1938 and subsequently would be within the period of limitation. The appellant (that is the decree-holder), he

said, was entitled to waive his right to have a final decree for the entire amount as stated in the preliminary decree and to ask for a final decree in

respect of the instalments which were within limitation. He accordingly set aside the Munsif"s decree and passed a final decree in respect of those

instalments which became due in July 1938 and subsequently, that is in respect of the last five instalments. The ""usual law"" referred by the Munsif

who passed the preliminary decree is contained in Sub-section (4) of Section 3, U.P. Agriculturists" Relief Act. The sub-section reads as follows:

If the decree provides for payment by instalments, the Court shall direct that, where the number of instalments allowed is four or five and any two

instalments are in arrears, or where the number allowed is six or more and any three instalments are in arrears, the decree-holder may,

notwithstanding the provisions of any law for the time being in force, immediately enforce payment of the whole amount then remaining due under

the decree, and in the case of a decree for sale or foreclosure apply that a final decree shall be passed.

2. The view taken by the Munsif who dismissed the application for a final decree appears to have been that it was incumbent upon the decree-

holder to apply for a final decree within three years of the date when,. payment of the third instalment became due and that not having done so

within this period, he was barred from making a subsequent application based on later defaults. The Additional Civil Judge observed that while the

decree-holder had a right to apply for a final decree in respect of the total amount decreed when three instalments remained unpaid, he could apply

for a final decree in respect of each instalment as it fell due. He considered an argument that in a mortgage suit there can only be one final decree

and not several and, therefore, the appellant was not entitled to have a final decree prepared in respect of each instalment, but remarked that there

is nothing in law against several final decrees being prepared in a ease.

3. With regard to this, I do not think that the Additional Civil Judge"s view is correct; nor do I think that the question is relevant. The question is

not whether it is open to a decree-holder to have more than one final decree prepared but whether he can elect to wait until the end of the period

prescribed for payment of the instalments before applying for a final decree, or must make the application as soon as it is possible for him to do so,

in this case upon default of payment of the first three instalments. The Additional Civil Judge referred to two cases which he thought supported his

view that it was not necessary for the decree-holder to apply as soon as it was possible. These are Badri Narain v. Kunj Behari Lal ("12) 35 All.

178 and Ram Prasad Ram and Another Vs. Jadunandan Upadhia . It has been objected that in both these cases the question arose upon an

application for execution and not upon an application for a final decree. To some extent this objection seems to be valid, though not entirely so.

Learned Counsel for the appellants, that is the judgment-debtors, rested his case on the provisions of Article 181, Limitation Act. This provides a

period of three years in the case of applications for which no period of limitation is provided elsewhere from the date when the right to apply

accrues. He contends that the right to apply accrued as soon as default was made in payment of the third instalment. Learned Counsel for the

respondent, on the other hand, contends that the provision applicable is that contained in Clause (7) of Article 182. This too provides a period of

three years, but the date from which the period begins to run is (where the application is to enforce any payment which the decree or order directs

to be made at a certain date) such date. The argument is that since the judgment-debtors were not required to pay the last five instalments until July

1938, January 1939, July 1939, January 1940 and July 1940, respectively it is these dates which have to be taken into consideration in deciding

whether the application was or was not within time.

4. The objection to Article 182 is that it applies only to applications in execution. It is clear that an application for a final decree is not an

application in execution. As was held by a Bench of this Court in Ahmed Khan and Others Vs. Musammat Gaura, an application for a final decree

in a suit on a mortgage being an application in the suit and not an application in execution, the fact that one such application has been made within

the prescribed period of limitation does not operate to extend the period of limitation in favour of a second application, the first having been

dismissed for default. It was also said by the same Bench in Muhammad Iltifat Husain Vs. Alim-Un-Nissa Bibi and Others, that an application for a

decree under the provisions of Order 34, Rule 6, Civil P.C. is not an application for the execution of the original decree for sale, but is an

application in the original suit for a new decree. It was added that such an application is governed as to limitation by Article 181 and must be made

within three years from the date when the right to apply accrued.

5. I am, therefore, of opinion that Article 181 and not Article 182 must be considered for the purpose of the present case. Had the matter been in

execution, there would have been little difficulty, for the question may be considered to have been settled by the decision in Ram Prasad Ram and

Another Vs. Jadunandan Upadhia . In that case a compromise decree was passed fixing payments of eight instalments on specified dates. The

decree-holder was given the right to realise the entire balance of his decretal amount in the case of default of payment of two successive

instalments. No instalments were found to have been paid. The application in execution was made more than three years after the right to apply

first accrued on default of payment of the first two instalments, and it was held that in respect of these two instalments Article 181 was applicable.

The decree-holder had, however, the right to receive instalments as and when they fell due and he might, therefore, recover such instalments as had

fallen due within three years from his application. As regards such instalments, Article 182 (7) was held applicable.

6. Learned Counsel for the appellants cited an English ease, Beeves v. Butcher (1891) 2 Q. B. D. 509. In this case, the plaintiff lent money to the

defendant for a period of five years. The defendant agreed to pay interest quarterly. It was provided in the agreement that if the defendant made

default in payment of any quarterly payment of interest for 21 days, the plaintiff might call in the principal. No interest was, however, paid. The

plaintiff commenced her action to recover the principal and interest within six years from the end of the term of five years. It was held that the

Statute of Limitations was a good defence and that time began to run from the earliest time at which the plaintiff could have brought her action, that

is 21 days after the first instalment of interest became due. For the respondents reference was made to the Privy Council case in AIR 1932 207

(Privy Council) , where their Lordships observed that they were not greatly impressed by the authority in Beeves v. Butcher (1891) 2 Q.B.D. 509

adding, ""It is, they think, always dangerous to apply English decisions to the construction of an Indian Act."" This was a case of a mortgage, where

the mortgage deed contained a provision that in default of payment of interest in any one year, the creditor would be entitled to realise the entire

mortgage money with interest at once. No interest was paid. Their Lordships of the Judicial Committee held that a condition of this nature was

inserted in the deed exclusively for the benefit of the mortgagees and that it purported to give them an option either to enforce their security at

once, or if the security was ample, to stand by their investment for the full term of the mortgage. This would not be the position in the present case

since the decree-holder would not stand to benefit by delaying his application for a final decree. Only the judgment-debtors could benefit by such

delay.

7. The question really comes to this, whether there is anything in Article 181 which indicates that the decree-holder''s right to apply for a final

decree accrues only once, namely as soon as default is made in payment of three instalments? He certainly has a right to apply then, but does the

provision mean that the right accrues only once? Supposing he does not exercise the right when it first accrues, would it not accrue again upon

subsequent defaults? Learned Counsel for the respondent cited a case of the Madras High Court and a case of the Oudh Chief Court which,

learned Counsel for the appellants concedes, support this view. In Gopal Naicker v. Alagirisami Naicker (''42) 29 AIR 1942 Mad. 581, a learned

Single Judge of the Madras High Court held, in similar circumstances, that a new cause of action accrues under Article 181 on every fresh default

and not only once on the occurrence of the first default. In AIR Ram Dutta v. Mahpal Singh (''38) 25 AIR 1938 Oudh 112 Hamilton and Yorke

JJ. took the same view, holding that the right to apply was not limited to the first default, but would arise not only on the first, but also on

subsequent breaches. I see no reason to take a different view. I am of opinion that the decree of the lower appellate Court was correct and I

dismiss the appeal with costs.

8. There was a cross objection by the plaintiff contending that he was protected by the Temporary Postponement of Execution of Decrees Act of

1937 and, therefore, entitled to a final decree for the whole amount. His learned Counsel concedes that for the reasons given by the Munsif this

Act does not protect him, as it applies only to institutions of suits and execution applications. The cross-objection is accordingly also dismissed

with costs.